

REMARKS

Claims 14-16, 18, 21, 53-58, 60 and 62-72 are pending in the application. Claims 14-16, 18, 53, 57, 64, 66, and 71 are rejected. Claims 54, 55, 65, 67-69, and 72 are objected to. Claims 14-16, 21, 53-57, 62-65, and 68-72 were allowed in the Office Action of September 22, 2006. Claims 21, 56, 58, 60, 62-63, and 70 were allowed in the Office Action of January 30, 2007. Claim 53 is amended herein. Claims 1-20, 22-53, 57, 59, 61, 64, 66, and 71 are canceled. Claims 21, 54-56, 58, 60, 62, 63, 65, 67-70, and 72 remain for consideration.

Claim Rejections – 35 USC §102; Ray et al.

The Examiner rejects claims 18, 58 and 60 as being anticipated by Ray et al. (U.S. Patent No. 5,026,373). The Examiner states:

Ray et al discloses an interbody spine fusion (50) comprising a body (53) defining an outside surface, a carrier (57), a carrier receiving area (56 & 52), implanting the bone implantable device adjacent a target bone structure (see Fig. 9), applying biologically active substance onto the carrier after said step of implanting for subsequent delivery to said target bone structure (see col. 8, lines 36-41; col. 10, lines 6-12).

Claim 18 is canceled.

Claims 58 and 60 were previously indicated to be allowable in the Office Action of January 30, 2007. Claims 58 and 60 were amended in the November 22, 2006, Response to Office Action to include the limitations of dependent claims 59 and 61, respectively, which were objected to in the Office Action of September 14, 2006, but indicated to be allowable if rewritten to include all of the limitations of base claims 58 and 60. In particular, the November 22, 2006 amendment to claims 58 and 60 added limitations directed to a plug in the port, a substantially solid end cap, and

the port being defined by the end cap. Ray et al. fails to teach at least the limitation directed to the plug in the port. Allowance of claims 58 and 60 is requested.

Claim Rejections - 35 USC §102; McDonnell

The Examiner rejects claims 14-16, 18, 53, 57, 64, 66 and 71 under 35 U.S.C. 102(b) as being anticipated by McDonnell (US 6,126,688) in view of Ray et al. (US 5,026,373). The Examiner states:

McDonnell discloses an interbody spine fusion (10) comprising a body (18) defining an outside surface, a carrier receiving area (14), an undoped carrier material (12), a port (16) and a pathway (see inside opening in Fig. 1). McDonnell discloses the invention substantially as claimed. However, McDonnell does not disclose the steps of applying biologically active substances onto the carrier after the step of implanting for subsequent delivery to the target bone structure.

Ray et al discloses an implant implanted within the vertebrae having a plurality of end caps and a step of implanting for subsequent delivery to the target bone structure (see col. 10, lines 6-12).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the step of inserting the bioactive substance of the McDonnell reference with the step of inserting the bioactive substance of the Ray et al reference in order to promote the growth of bone tissue within the implant.

Claims 14-16, 18, 53, 57, 64, 66 and 71 are canceled.

Allowable Subject Matter

Claims 54, 55, 65, 67-69, and 72 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 54 was amended to incorporate the limitations of base claim 53 in the Response to Office Action of April 17, 2007. Claim 54 is submitted to be allowable.

Claims 55, 65, and 67-69 are currently in independent form. Claims 55, 65, and 67-69 are submitted to be allowable.

Claim 72 depends from independent claim 21, which is indicated to be allowable. Claim 72, therefore, remains in dependent form.

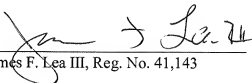
Considering the foregoing, it is sincerely believed that this case is in condition for allowance, which is respectfully requested.

This paper is intended to constitute a complete response to the outstanding Office Action. Please contact the undersigned if it appears that a portion of this response is missing or if there remain any additional matters to resolve. If the Examiner feels that processing of the application can be expedited in any respect by a personal conference, please consider this an invitation to contact the undersigned by phone.

Respectfully Submitted,

09/17/2007

Date


James F. Lea III, Reg. No. 41,143

FELLERS, SNIDER, BLANKENSHIP,
BAILEY & TIPPENS, P.C.
321 South Boston, Suite 800
Tulsa, OK 74103-3318
(918) 599-0621

Attorneys for Applicant

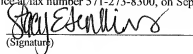
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I hereby certify that this correspondence and any document referred to as being attached thereto is being transmitted via facsimile to Examiner Alvin J. Stewart in Art Unit 3738 in the U.S. Patent Office at fax number 571-273-8300, on September 17, 2007.

Stacy E. Jenkins

(Type name of person mailing paper)


(Signature)

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